

AMENDED IN ASSEMBLY MAY 30, 2012

AMENDED IN ASSEMBLY MAY 25, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 1575**

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**Introduced by Assembly Member Lara  
(Coauthor: Assembly Member John A. Pérez)**

February 1, 2012

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An act to amend Section 35186 of, and to add Article 5.5 (commencing with Section 49010) to Chapter 6 of Part 27 of Division 4 of Title 2 of, the Education Code, and to amend Section 905 of the Government Code, relating to pupil fees.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1575, as amended, Lara. Pupil fees.

(1) Existing law requires the Legislature to provide for a system of common schools by which a free school is required to be kept up and supported in each district. Existing law prohibits a pupil enrolled in school from being required to pay a fee, deposit, or other charge not specifically authorized by law.

This bill would prohibit a pupil enrolled in a public school from being required to pay a pupil fee, as defined, for participation in an educational activity, as defined, as specified. The bill would provide that this prohibition is not to be interpreted to prohibit solicitation of voluntary donations, voluntary participation in fundraising activities, or school districts, schools, and other entities from providing pupils prizes or other recognition for voluntarily participating in fundraising activities. The bill would specify that these provisions apply to all public schools, including, but not limited to, charter schools and alternative schools,

are declarative of existing law, and should not be interpreted to prohibit the imposition of a fee, deposit, or other charge otherwise allowed by law.

~~The bill would require a superintendent of a school district, county superintendent of schools, or chief executive officer, or a person in the equivalent position, of a charter school, commencing with the 2012–13 fiscal year, and each fiscal year thereafter, to determine, within the first 8 weeks after the first day pupils attend school for that school year, or during a specified time period for the 2012–13 fiscal year, whether an unlawful pupil fee has been, or is being, charged in the current fiscal year, or on or after January 1, 2013, for the 2012–13 fiscal year. If the superintendent of a school district, county superintendent of schools, or chief executive officer, or a person in the equivalent position, of a charter school makes this determination, the bill would require him or her to present the determination at a public hearing or meeting of the applicable governing board or body at which the governing board or body would be required to identify the nature of the violation and take action to provide full reimbursements to all affected pupils, parents, or guardians within a specified time period. The bill would require the hearing or meeting to meet specified requirements. By imposing additional duties on local educational agencies, this bill would impose a state-mandated local program.~~

*The bill would require the State Department of Education, commencing with the 2014–15 fiscal year, and every 3 years thereafter, to develop and distribute guidance for county and district superintendents of schools and charter school administrators regarding the imposition of pupil fees for participation in educational activities in public schools. The bill would require the department to post the guidance on its Internet Web site and would provide that the guidance does not constitute a regulation subject to specified law.*

(2) Existing law requires a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, teacher vacancy or misassignment, and intensive instruction and services provided to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12. Existing law provides certain complainants the right to file an appeal to the Superintendent of Public Instruction, who is required to provide a written report to the State Board of Education that describes the basis for the complaint and,

as appropriate, proposes a remedy. A notice regarding the appropriate subjects of a complaint is required to be posted in each classroom in each school in the school district and a complaint regarding those deficiencies is required to be filed with the principal of the school or his or her designee, except as specified.

This bill also would require a school district and a charter school to use its uniform complaint process to help identify and resolve any deficiencies related to the imposition of pupil fees for participation in educational activities, as those terms are defined. The bill also would provide persons with a complaint regarding the imposition of pupil fees the right to file an appeal to the Superintendent and would require the Superintendent to provide the written report to the state board and the complainant no later than 30 working days after the appeal was received by the Superintendent. If the report finds a violation, the bill would require the Superintendent to require the offending school district, charter school, or school to fully reimburse all affected pupils, parents, or guardians. The bill also would require the classroom notice to include certain information about the prohibition against charging pupil fees for participation in educational activities. The bill would require a school district, county office of education, and charter school to establish local policies and procedures, post notices, and implement the uniform complaint process provisions regarding the imposition of pupil fees for participation in educational activities by March 1, 2013. By imposing additional duties on local educational agencies, this bill would impose a state-mandated local program.

(3) Existing law excepts certain claims from the requirement that all claims for money or damages against local public entities be presented in accordance with specified law.

This bill would additionally except specified claims for reimbursement of pupil fees for participation in educational activities.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 35186 of the Education Code is amended  
2 to read:

3     35186. (a) A school district shall use the uniform complaint  
4 process it has adopted as required by Chapter 5.1 (commencing  
5 with Section 4600) of Division 1 of Title 5 of the California Code  
6 of Regulations, with modifications, as necessary, to help identify  
7 and resolve any deficiencies related to instructional materials,  
8 emergency or urgent facilities conditions that pose a threat to the  
9 health and safety of pupils or staff, teacher vacancy or  
10 misassignment, intensive instruction and services provided pursuant  
11 to Section 37254 to pupils who have not passed one or both parts  
12 of the high school exit examination after the completion of grade  
13 12, and the imposition of pupil fees for participation in educational  
14 activities. A charter school shall use the uniform complaint process  
15 it has adopted as required by Chapter 5.1 (commencing with  
16 Section 4600) of Division 1 of Title 5 of the California Code of  
17 Regulations, with modifications, as necessary, to help identify and  
18 resolve any deficiencies related to the imposition of pupil fees for  
19 participation in educational activities.

20     (1) A complaint may be filed anonymously. A complainant who  
21 identifies himself or herself is entitled to a response if he or she  
22 indicates that a response is requested. A complaint form shall  
23 include a space to mark to indicate whether a response is requested.  
24 If Section 48985 is otherwise applicable, the response, if requested,  
25 and report shall be written in English and the primary language in  
26 which the complaint was filed. All complaints and responses are  
27 public records.

28     (2) The complaint form shall specify the location for filing a  
29 complaint. A complainant may add as much text to explain the  
30 complaint as he or she wishes.

31     (3) Except as provided pursuant to paragraph (4), a complaint  
32 shall be filed with the principal of the school or his or her designee.  
33 A complaint about problems beyond the authority of the school  
34 principal shall be forwarded in a timely manner but not to exceed  
35 10 working days to the appropriate school district or charter school  
36 official for resolution.

37     (4) A complaint regarding any deficiencies related to intensive  
38 instruction and services provided pursuant to Section 37254 to

1 pupils who have not passed one or both parts of the high school  
2 exit examination after the completion of grade 12 shall be  
3 submitted to the district official designated by the district  
4 superintendent. A complaint may be filed at the school district  
5 office, or it may be filed at the schoolsite and shall be immediately  
6 forwarded to the designee of the district superintendent.

7 (b) The principal or the designee of the district superintendent  
8 or charter school, as applicable, shall make all reasonable efforts  
9 to investigate any problem within his or her authority. The principal  
10 or designee of the district superintendent or charter school shall  
11 remedy a valid complaint within a reasonable time period but not  
12 to exceed 30 working days from the date the complaint was  
13 received. The principal or designee of the district superintendent  
14 or charter school shall report to the complainant the resolution of  
15 the complaint within 45 working days of the initial filing. If the  
16 principal makes this report, the principal shall also report the same  
17 information in the same timeframe to the designee of the district  
18 superintendent or charter school.

19 (c) A complainant not satisfied with the resolution of the  
20 principal or the designee of the district superintendent or charter  
21 school has the right to describe the complaint to the governing  
22 board of the school district or the governing body of the charter  
23 school at a regularly scheduled hearing of the governing board or  
24 body. As to complaints involving a condition of a facility that  
25 poses an emergency or urgent threat, as defined in paragraph (1)  
26 of subdivision (c) of Section 17592.72, or complaints involving  
27 the imposition of pupil fees for participation in educational  
28 activities, a complainant who is not satisfied with the resolution  
29 proffered by the principal or the designee of the district  
30 superintendent or charter school has the right to file an appeal to  
31 the Superintendent, who shall provide a written report to the state  
32 board and the complainant no later than 30 working days after the  
33 date the appeal was received by the Superintendent describing the  
34 basis for the complaint and, as appropriate, a proposed remedy for  
35 the issue described in the complaint. If the report finds that a school  
36 district, charter school, or school has unlawfully imposed a pupil  
37 fee for participation in educational activities, the Superintendent  
38 shall require the school district, charter school, or school to fully  
39 reimburse all affected pupils, parents, or guardians.

(d) A school district or charter school shall report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the school district or the governing body of the charter school. The summaries shall be publicly reported on a quarterly basis at a regularly scheduled meeting of the governing board of the school district or the governing body of the charter school. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

(e) The procedure required pursuant to this section is intended to address all of the following in school districts, and the complaints described in paragraph (5) in charter schools:

(1) A complaint related to instructional materials as follows:

(A) A pupil, including an English learner, does not have standards-aligned textbooks or instructional materials or state-adopted or district-adopted textbooks or other required instructional material to use in class.

(B) A pupil does not have access to instructional materials to use at home or after school.

(C) Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.

(2) A complaint related to teacher vacancy or misassignment as follows:

(A) A semester begins and a teacher vacancy exists.

(B) A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20-percent English learner pupils in the class. This subparagraph does not relieve a school district from complying with state or federal law regarding teachers of English learners.

(C) A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

(3) A complaint related to the condition of facilities that pose an emergency or urgent threat to the health or safety of pupils or staff as defined in paragraph (1) of subdivision (c) of Section 17592.72 and any other emergency conditions the school district determines appropriate and the requirements established pursuant to subdivision (a) of Section 35292.5.

1 (4) A complaint related to the provision of intensive instruction  
2 and services pursuant to paragraphs (4) and (5) of subdivision (d)  
3 of Section 37254.

4 (5) A complaint related to the imposition of pupil fees for  
5 participation in educational activities.

6 (f) (1) In order to identify appropriate subjects of complaint,  
7 a notice shall be posted in each classroom in each school in the  
8 school district notifying parents, guardians, pupils, and teachers  
9 of the following:

10 (A) There should be sufficient textbooks and instructional  
11 materials. For there to be sufficient textbooks and instructional  
12 materials each pupil, including English learners, must have a  
13 textbook or instructional materials, or both, to use in class and to  
14 take home.

15 (B) School facilities must be clean, safe, and maintained in good  
16 repair.

17 (C) There should be no teacher vacancies or misassignments as  
18 defined in paragraphs (3) and (5) of subdivision (h).

19 (D) Pupils shall not be charged fees, including security deposits,  
20 or be required to purchase materials or equipment, to participate  
21 in a class or an extracurricular activity.

22 (E) Pupils who have not passed the high school exit examination  
23 by the end of grade 12 are entitled to receive intensive instruction  
24 and services for up to two consecutive academic years after  
25 completion of grade 12 or until the pupil has passed both parts of  
26 the high school exit examination, whichever comes first, pursuant  
27 to paragraphs (4) and (5) of subdivision (d) of Section 37254. The  
28 information in this paragraph, which is to be included in the notice  
29 required pursuant to this subdivision, shall only be included in  
30 notices posted in classrooms in schools with grades 10 to 12,  
31 inclusive.

32 (F) The location at which to obtain a form to file a complaint  
33 in case of a shortage of complaint forms. Posting a notice  
34 downloadable from the Internet Web site of the department shall  
35 satisfy this posting requirement.

36 (2) In order to identify appropriate subjects of complaint, a  
37 notice shall be posted in each classroom of each charter school  
38 notifying parents, guardians, pupils, and teachers of both of the  
39 following:

1 (A) Pupils shall not be charged fees, including security deposits,  
2 or be required to purchase materials or equipment, to participate  
3 in a class or an extracurricular activity.

4 (B) The location at which to obtain a form to file a complaint  
5 in case of a shortage of complaint forms. Posting a notice  
6 downloadable from the Internet Web site of the department shall  
7 satisfy this posting requirement.

8 (g) (1) A local educational agency shall establish local policies  
9 and procedures, post notices, and implement this section on or  
10 before January 1, 2005.

11 (2) A school district, county office of education, and charter  
12 school shall establish local policies and procedures, post notices,  
13 and implement the provisions of this section regarding the  
14 imposition of pupil fees for participation in educational activities  
15 on or before March 1, 2013.

16 (h) For purposes of this section, the following definitions apply:

17 (1) "Educational activity" has the same meaning as specified  
18 in subdivision (a) of Section 49010.

19 (2) "Good repair" has the same meaning as specified in  
20 subdivision (d) of Section 17002.

21 (3) "Misassignment" means the placement of a certificated  
22 employee in a teaching or services position for which the employee  
23 does not hold a legally recognized certificate or credential or the  
24 placement of a certificated employee in a teaching or services  
25 position that the employee is not otherwise authorized by statute  
26 to hold.

27 (4) "Pupil fees" has the same meaning as specified in subdivision  
28 (b) of Section 49010.

29 (5) "Teacher vacancy" means a position to which a single  
30 designated certificated employee has not been assigned at the  
31 beginning of the year for an entire year or, if the position is for a  
32 one-semester course, a position to which a single designated  
33 certificated employee has not been assigned at the beginning of a  
34 semester for an entire semester.

35 SEC. 2. Article 5.5 (commencing with Section 49010) is added  
36 to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education  
37 Code, to read:



Article 5.5. Pupil Fees

49010. For purposes of this article, the following terms have the following meanings:

(a) “Educational activity” means an activity offered by a school, school district, charter school, or county office of education that constitutes an integral fundamental part of elementary and secondary education, including, but not limited to, curricular and extracurricular activities.

(b) “Pupil fee” means a fee, deposit, or other charge imposed on pupils, or a pupil’s parents or guardians, in violation of Section 49011 and Section 5 of Article IX of the California Constitution, which require educational activities to be provided free of charge to all pupils without regard to their families’ ability or willingness to pay fees or request special waivers, as provided for in *Hartzell v. Connell* (1984) 35 Cal.3d 899. A pupil fee includes, but is not limited to, all of the following:

(1) A fee charged to a pupil as a condition for registering for school or classes, or as a condition for participation in a class or an extracurricular activity, regardless of whether the class or activity is elective or compulsory, or is for credit.

(2) A security deposit, or other payment, that a pupil is required to make to obtain a lock, locker, book, class apparatus, musical instrument, uniform, or other materials or equipment.

(3) A purchase that a pupil is required to make to obtain materials, supplies, equipment, or uniforms associated with an educational activity.

49011. (a) A pupil enrolled in a public school shall not be required to pay a pupil fee for participation in an educational activity.

(b) All of the following requirements apply to the prohibition identified in subdivision (a):

(1) All supplies, materials, and equipment needed to participate in educational activities shall be provided to pupils free of charge.

(2) A fee waiver policy shall not make a pupil fee permissible.

(3) School districts and schools shall not establish a two-tier educational system by requiring a minimal educational standard and also offering a second, higher educational standard that pupils may only obtain through payment of a fee or purchase of additional supplies that the school district or school does not provide.

(4) A school district or school shall not offer course credit or privileges related to educational activities in exchange for money or donations of goods or services from a pupil or a pupil's parents or guardians, and a school district or school shall not remove course credit or privileges related to educational activities, or otherwise discriminate against a pupil, because the pupil or the pupil's parents or guardians did not or will not provide money or donations of goods or services to the school district or school.

(c) This article shall not be interpreted to prohibit solicitation of voluntary donations of funds or property, voluntary participation in fundraising activities, or school districts, schools, and other entities from providing pupils prizes or other recognition for voluntarily participating in fundraising activities.

(d) This article applies to all public schools, including, but not limited to, charter schools and alternative schools.

(e) This article is declarative of existing law and shall not be interpreted to prohibit the imposition of a fee, deposit, or other charge otherwise allowed by law.

~~49012. (a) (1) Commencing with the 2012-13 fiscal year, and each fiscal year thereafter, a superintendent of a school district, county superintendent of schools, or chief executive officer, or a person in the equivalent position, of a charter school shall determine, within the first eight weeks after the first day pupils attend school for that school year, whether pupil fees for participation in educational activities have been charged, or are being charged, within his or her jurisdiction in the current fiscal year in violation of Section 49011 and Section 5 of Article IX of the California Constitution.~~

~~(2) For purposes of the 2012-13 fiscal year only, the determinations required by paragraph (1) shall be made from February 1, 2013, to March 1, 2013, inclusive, and shall be limited in scope to determining whether pupil fees for participation in educational activities have been, or are being, charged on or after January 1, 2013.~~

~~(b) (1) If a superintendent of a school district or county superintendent of schools determines that an unlawful pupil fee was, or is being, charged in the current fiscal year, he or she shall present this determination at a public hearing of the governing board of the applicable school district or county office of education at which the governing board shall identify the nature of the~~

1 ~~violation and take action to provide full reimbursements to all~~  
2 ~~affected pupils, parents, or guardians within 10 weeks of the~~  
3 ~~beginning of the school year in which the determination is made.~~

4 ~~(2) If a chief executive officer, or a person in the equivalent~~  
5 ~~position, of a charter school determines that an unlawful pupil fee~~  
6 ~~was, or is being, charged in the current fiscal year, he or she shall~~  
7 ~~present this determination at a public meeting of the governing~~  
8 ~~body of the charter school at which the governing body, or the~~  
9 ~~chief executive officer or person in the equivalent position, shall~~  
10 ~~identify the nature of the violation and take action to provide full~~  
11 ~~reimbursements to all affected pupils, parents, or guardians within~~  
12 ~~10 weeks of the beginning of the school year in which the~~  
13 ~~determination is made.~~

14 ~~(c) A public hearing or meeting held pursuant to subdivision~~  
15 ~~(b) shall meet all of the following requirements:~~

16 ~~(1) Be conducted during a regularly scheduled meeting of the~~  
17 ~~governing board held pursuant to Article 3 (commencing with~~  
18 ~~Section 35140) of Chapter 2 of Part 21 of Division 3 or Article 1~~  
19 ~~(commencing with Section 1000) of Chapter 1 of Part 2 of Division~~  
20 ~~1 of Title 1, or, in the case of a charter school, during a public~~  
21 ~~meeting of the governing body of the charter school where the~~  
22 ~~parent or guardian of each pupil enrolled in the charter school has~~  
23 ~~been notified prior to the meeting that the governing body will be~~  
24 ~~taking action pursuant to subdivision (b).~~

25 ~~(2) Take place on or before the end of the eighth week after the~~  
26 ~~first day pupils attend school for that school year. For schools that~~  
27 ~~operate on a multitrack, year-round calendar, the hearing or~~  
28 ~~hearings shall be held on or before the end of the eighth week after~~  
29 ~~the first day pupils attend school for that school year on any tracks~~  
30 ~~that begin a school year in August or September.~~

31 ~~(3) For the 2012–13 fiscal year, a public hearing or meeting~~  
32 ~~held pursuant to subdivision (b) shall take place on or before March~~  
33 ~~1, 2013, and any reimbursement made pursuant to subdivision (b)~~  
34 ~~shall be provided on or before March 15, 2013.~~

35 *49012. (a) Commencing with the 2014–15 fiscal year, and*  
36 *every three years thereafter, the department shall develop and*  
37 *distribute guidance for county and district superintendents of*  
38 *schools and charter school administrators regarding the imposition*  
39 *of pupil fees for participation in educational activities in public*

1 schools. The department shall post the guidance on the  
2 department's Internet Web site.

3 (b) The guidance developed pursuant to subdivision (a) shall  
4 not constitute a regulation subject to the requirements of Chapter  
5 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
6 Title 2 of the Government Code.

7 SEC. 3. Section 905 of the Government Code is amended to  
8 read:

9 905. There shall be presented in accordance with Chapter 1  
10 (commencing with Section 900) and Chapter 2 (commencing with  
11 Section 910) all claims for money or damages against local public  
12 entities except any of the following:

13 (a) Claims under the Revenue and Taxation Code or other statute  
14 prescribing procedures for the refund, rebate, exemption,  
15 cancellation, amendment, modification, or adjustment of any tax,  
16 assessment, fee, or charge or any portion thereof, or of any  
17 penalties, costs, or charges related thereto.

18 (b) Claims in connection with which the filing of a notice of  
19 lien, statement of claim, or stop notice is required under any law  
20 relating to liens of mechanics, laborers, or materialmen.

21 (c) Claims by public employees for fees, salaries, wages,  
22 mileage, or other expenses and allowances.

23 (d) Claims for which the workers' compensation authorized by  
24 Division 4 (commencing with Section 3200) of the Labor Code is  
25 the exclusive remedy.

26 (e) Applications or claims for any form of public assistance  
27 under the Welfare and Institutions Code or other provisions of law  
28 relating to public assistance programs, and claims for goods,  
29 services, provisions, or other assistance rendered for or on behalf  
30 of any recipient of any form of public assistance.

31 (f) Applications or claims for money or benefits under any public  
32 retirement or pension system.

33 (g) Claims for principal or interest upon any bonds, notes,  
34 warrants, or other evidences of indebtedness.

35 (h) Claims that relate to a special assessment constituting a  
36 specific lien against the property assessed and that are payable  
37 from the proceeds of the assessment, by offset of a claim for  
38 damages against it or by delivery of any warrant or bonds  
39 representing it.

1 (i) Claims by the state or by a state department or agency or by  
2 another local public entity or by a judicial branch entity.

3 (j) Claims arising under any provision of the Unemployment  
4 Insurance Code, including, but not limited to, claims for money  
5 or benefits, or for refunds or credits of employer or worker  
6 contributions, penalties, or interest, or for refunds to workers of  
7 deductions from wages in excess of the amount prescribed.

8 (k) Claims for the recovery of penalties or forfeitures made  
9 pursuant to Article 1 (commencing with Section 1720) of Chapter  
10 1 of Part 7 of Division 2 of the Labor Code.

11 (l) Claims governed by the Pedestrian Mall Law of 1960 (Part  
12 1 (commencing with Section 11000) of Division 13 of the Streets  
13 and Highways Code).

14 (m) Claims made pursuant to Section 340.1 of the Code of Civil  
15 Procedure for the recovery of damages suffered as a result of  
16 childhood sexual abuse. This subdivision shall apply only to claims  
17 arising out of conduct occurring on or after January 1, 2009.

18 (n) Claims made pursuant to Section 701.820 of the Code of  
19 Civil Procedure for the recovery of money pursuant to Section  
20 26680.

21 (o) Claims made pursuant to Section 35186 of the Education  
22 Code for reimbursement of pupil fees for participation in  
23 educational activities.

24 SEC. 4. If the Commission on State Mandates determines that  
25 this act contains costs mandated by the state, reimbursement to  
26 local agencies and school districts for those costs shall be made  
27 pursuant to Part 7 (commencing with Section 17500) of Division  
28 4 of Title 2 of the Government Code.